

Civil Action No. \_\_\_\_\_  
JURY DEMANDED

4. Defendant Banyan Trading Corporation (“Banyan”) is a Florida corporation and may be served through its registered agent, Carlos Velasquez, at 3109 Grand Avenue #262, Miami, Florida 33133.

5. Defendant Carlos Velasquez (“Velasquez”) is a citizen and resident of Florida and may be served with process at 3109 Grand Avenue, Unit 434, Miami, Florida 33133.

### ***Facts***

6. In 2011, Banyan made two purchases from Plaintiff. The first purchase, made March 15, 2011 (“March purchase”), was for 26,012 yards of denim in the amount of \$46,301.36. The second purchase, made April 6, 2011 (“April purchase”), was for 21,217 yards of denim in the purchase amount of \$45,616.55.

7. Banyan made a large partial payment for the March purchase, but failed to make any payment for the April purchase.

8. Velasquez made repeated representations via email to Plaintiff that payment for the April purchase had been sent. Velasquez then made additional repeated representations that payment was about to be wired to plaintiff. Still further representations were made by Velasquez in phone conversations with Plaintiff that payment was imminent.

9. Despite these various representations made by Velasquez, Plaintiff never received any further payment for the March purchase, and no payment at all for the April purchase.

### ***Count I – Breach of Contract***

10. Paragraphs 1-9 of this Complaint are incorporated and re-alleged by reference.

11. Plaintiff and Banyan entered into a binding and enforceable contractual agreement wherein Plaintiff would provide specific types and amounts of denim and Banyan would pay the agreed purchase price.

12. Plaintiff provided an initial shipment of denim. Defendants took possession of the shipment and, after some delay, made a partial payment in the amount of \$22,000, rather than the agreed-upon amount of \$46,301.36. After further delay, Defendants made an additional partial payment of \$20,266, but did not pay the full amount outstanding.

13. Plaintiff provided a second shipment of denim, at the agreed-upon price of \$45,616.55. Defendants again took receipt of the shipment. This time, Defendants made no payment. The amount outstanding on the initial shipment remained unpaid, and no payment in any amount was made for the second shipment.

14. Since May 6, 2011, Defendants have made no further payments, and have owed \$49,651.91 to Plaintiff for over two years without making any effort to pay. As a direct result of Defendants' breach of contract, Plaintiff has sustained damages.

### ***Count II – Fraudulent Misrepresentation***

15. Paragraphs 1-11 of this Complaint are incorporated and re-alleged by reference.

16. Velasquez made repeated and varied representations to the Plaintiff that payment would be made for the denim ordered from Plaintiff. Velasquez claimed the nonpayment was due to problems with a wire transfer at a bank on multiple occasions, but then moved on to health problems, and much later began to blame the non-payment on customs officials. Throughout all of 2011 and 2012, and up to March 15 and March 20 of 2013, Velasquez continued to make varying representations by email regarding his

continued nonpayment, and gave a variety of reasons why he had not yet made payment and a range of reasons why payment was imminent. Despite these numerous representations, Velasquez never made payment.

17. Due to the number and varied nature of these representations, it would seem impossible that Velasquez was simply mistaken, or that these representations could have been inadvertent. The only logical conclusion to be drawn from Velazquez's behavior is that he had no intention of his company paying for the denim, and that the obvious purpose of these varied attempts to deceive Plaintiff, was to delay payment long enough so that the Plaintiff would become discouraged and abandon its efforts to obtain remuneration.

18. Plaintiff did not know Velasquez's representations were false at the time they were made, and relied on the truth of Velasquez's representations to its detriment.

19. As a result of Defendants' breach of contract and repeated fraudulent misrepresentations, Plaintiff suffered damages.

### ***Request for Relief***

Air Concepts respectfully requests the Court award it the following relief:

- A. That proper process issue and be served upon Defendants and that Defendants be required to appear and answer this Complaint within the time required by law;
- B. Award compensatory damages against Defendants jointly and severally in the amount of \$49,651.91 plus prejudgment interest and costs;
- C. Award punitive damages related to Defendants' fraudulent misrepresentations jointly and severally in the amount of \$50,000;

- D. Empanel a jury to hear and determine all issues in this case;
- E. Award any such further, other, or general relief to which it may be entitled.

Respectfully submitted,

ARNETT, DRAPER & HAGOOD, LLP

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